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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11

12 ALBERT WRIGHT JR. and MARVA JOE  
GREEN WRIGHT,

13 Plaintiff(s),

14 vs.

15 A.W. CHESTERTON COMPANY, ET  
AL.,

16 Defendants.  
17

USDC No.: C07-5403-MJJ

[PROPOSED] ORDER  
DENYING PLAINTIFFS' MOTION  
TO REMAND CASE TO CALIFORNIA  
SUPERIOR COURT

Date: January 8, 2008\*

Time: 9:00 a.m.\*

Judge: Hon. Martin J. Jenkins

Courtroom: 11

(\*Original court date and time, which is  
expected to be continued pursuant to  
reassignment.)

20  
21 Plaintiff's Motion to Remand Case to California Superior Court came on regularly  
22 for hearing at the above date and time before the Honorable Judge Martin J. Jenkins in  
23 Courtroom 11 of the above-captioned Court. Plaintiffs' and Defendants' counsel of  
24 record appeared for oral argument.

25 The Court, relying on the holdings in *Boyle v. United Technologies Corp.*, 487 U.S.  
26 500 (1988) and in *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9<sup>th</sup> Cir. 2006),  
27 among other authority that removal pursuant to 28 U.S.C. §1442(a)(1), is to be construed  
28 broadly, not strictly and is proper since Foster Wheeler's moving papers and

1 supporting evidence demonstrated that : (1) it acted under the direction of a federal  
2 officer; (2) raised a colorable federal defense to the plaintiff's claims; and (3) a causal  
3 nexus exists between the plaintiff's claims and the defendant's acts performed under  
4 color of federal office.

5 To the extent that the Court relied upon evidence to which there is an objection,  
6 the parties' objections are overruled. The Court finds that the declarations of J. Thomas  
7 Schroppe and Admiral Lehman are sufficient in laying the requisite foundation to  
8 support the facts that they assert. To the extent that the Court did not rely on such  
9 evidence, the parties' objections are overruled as moot. The Court has not relied on any  
10 inadmissible evidence in deciding this motion.

11 On this \_\_\_\_ day of \_\_\_\_\_, 2008 IT IS HEREBY ORDERED as  
12 follows:

13 Plaintiffs' Motion to Remand Case to California Superior Court is Denied.

14 SO ORDERED, this \_\_ day of \_\_\_\_\_, 2008.

15  
16 \_\_\_\_\_  
17 Chief Magistrate Judge Martin J. Jenkins  
18 United States District Court  
19 Northern District of California  
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Wright, Albert Jr. & Marva Joe  
San Francisco County Superior Court Case No. C-07-5403-MJJ

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of 18 years, and not a party to the within action. My electronic notification address is service@bhplaw.com and my business address is 135 Main Street, 20<sup>th</sup> Floor, San Francisco, California 94105. On the date below, I served the following:


[PROPOSED] ORDER DENYING PLAINTIFFS' MOTION TO REMAND CASE TO CALIFORNIA SUPERIOR COURT

on the following:

KELLER, FISHBACK & JACKSON, LLP  
28720 Roadside Drive Suite 201  
Agoura Hills, CA 91301  
Fax: (818) 292-8891

- X By transmitting electronically the document(s) listed above as set forth on the electronic service list on this date before 5:00 p.m.
- o By transmitting via facsimile the document(s) listed above to the fax number(s) set forth above on this date before 5:00 p.m.
- o By placing the document(s) listed above in a sealed envelope and placing the envelope for collection and mailing on the date below following the firm's ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal service on the same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- o By placing the document(s) listed above in a sealed envelope designated for Federal Express overnight delivery and depositing same with fees thereupon prepaid, in a facility regularly maintained by Federal Express, addressed as set forth above.
- o by causing personal delivery of the documents(s) listed above to the person(s) at the address(es) set forth above.

I declare under penalty of perjury that the above is true and correct.  
Executed on December 17, 2007, at San Francisco, California.

  
MICHELLE ANLAG